# In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 2

WILLIAM SCHNEIDERMAN, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES

There is herewith set out a list of exhibits introduced by the Government in this case, giving the number and name, the date of publication, and the date of circulation in the United States of each exhibit; there are also set out record references showing petitioner's testimony concerning these exhibits.

*Scope of tabulation.*—The tabulation is confined to documents introduced by the Government. It omits the first five Government exhibits which are as follows: Exhibit 1, Petitioner's Declaration of Intention (R. 72–73); Exhibit 2, Petition for Naturalization (R. 74–78); Exhibit 3, Peti-

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tioner's Certificate of Naturalization (R. 78–79); Exhibit 4, Affidavit of Robert M. Charles (R. 81–84); and Exhibit 5, the Constitution and By-laws of the Communist Party of the United States of America (R. 14–38). In addition, the following exhibits have been omitted: Exhibit 20, letter signed by petitioner dated September 10, 1925 (R. 175); Exhibit 21, letter signed by petitioner dated June 13, 1928 (R. 175–176); Exhibit 22, letter signed by petitioner dated December 18, 1929 (R. 176–177); Exhibit 23, letter signed by petitioner dated January 30, 1930 (R. 178); Exhibit 24, letter signed by petitioner dated January 30, 1930 (R. 179–180); Exhibit 25, letter signed by petitioner dated January 30, 1930 (R. 180);[1] Exhibit 28, card of Minnie Karasick, a witness for petitioner in his naturalization proceedings (R. 316–318); and Exhibit 29, membership book of Minnie Carson in the Young Pioneers (R. 318–319).

### Exhibit 6

*Programme of the Communist International*

This pamphlet was published by the Workers Library Publishers, Inc.,[2] in 1929 (see flyleaf).

[1] The purpose of these exhibits was to show petitioner's official position and activities in several of the communist organizations.

[2] Petitioner testified that this organization had been organized by members of the Party to publish communist literature (R. 99; but cf. R. 830).

The Programme was adopted in 1928 by the World Congress of the Communist International (R. 109–110). At least until 1931 it was used in classes conducted by the Communist Party (R. 205–206; see R. 184). It was widely circulated in Los Angeles by the Communist Party and was sold in Communist Party book shops as official literature (R. 237). Petitioner testified that he had seen the book and that he was "familiar with it in so far as I have read the resolutions and reports of that congress" (R. 103). At a later point he testified that he had read the Programme, that he was familiar with it and that he attended the Congress at which it was adopted (R. 834). He testified that he agreed with its general political (R. 103) or theoretical (R. 108, 882) conclusions (see also R. 862, 898), and that he approved the program in so far as it interprets general Marxism and Lenin theories (R. 108–109).

EXHIBIT 7

*Manifesto of the Communist Party,* by Karl Marx and Friedrich Engels, edited and annotated by Friedrich Engels, authorized English Translation

This edition of the Manifesto was published by the International Publishers[3] in 1932 (see page opposite preface, p. 3 of exhibit). The pamphlet

[3] The International Publishers was a corporation through which, according to petitioner's testimony, the Party "carried on its work" (R. 99).

was sold over a period of years in communist book stores; in different form it was one of the earliest Communist pamphlets; and was circulated by the Party as part of its official literature (R. 238). In earlier editions, it was used in the educational program of the Party (R. 206). Petitioner testified that he was familiar with this work and "believes" it is one of the authorized publications. He testified that it "is the basis of tactics for Communism, under the Marxism theory. I believe that these general principles of Marxism, particularly as they applied to the period in which they were written and the country about which they were written, are entirely correct." He further testified that he approved of those principles at the time of his naturalization (R. 122–123, see also R. 103), and that he used the Manifesto as Educational Director of the Young Workers' League (R. 88–89). This was from 1922 to about 1925 (R. 86, 88).

EXHIBIT 8

***The State and Revolution,*** by V. I. Ulianov (Nicolai Lenin)

The pamphlet in evidence was published in April 1924 for the Workers Party of America by the Daily Worker Publishing Company (see cover of exhibit).[4] Petitioner testified that this pam-

[4] For facts relating to the creation and functioning of the Daily Worker Publishing Company, see the Government's main brief, pp. 143–144.

phlet was probably used by the Young Workers League classes when he was educational director (R. 89). At a later point he testified that the pamphlet was used, although again he stated that he was not absolutely sure but that it was probably used after 1924 (R. 127, 128). He also testified that it was circulated by the Literature Department of the Communist Party (R. 128). During 1924 and 1925, the book was used by Communist Party classes (R. 94, 89, 206, 207). It was sold by Party book shops in 1927 and until the time of the hearing (R. 238). Between January 15 and August 1, 1925, at least five thousand copies were published (Exhibit 12, p. 157). Petitioner's testimony indicated his familiarity with this document (R. 89, 127–128). He also testified that at the time of his naturalization, he advocated "socialism" as expressed in the writings of Lenin (R. 862, 898, 103).

EXHIBIT 9

*"Left-Wing" Communism—An Infantile Disorder,* by V. I. Lenin

This revised translation was published in 1934 by the International Publishers (see page opposite table of contents). It was originally published and translated into English in 1920; and several versions of these translations had been published in the United States thereafter, but by 1934, the book had been out of print in this country for some time (see *ibid;* R. 144). Peti-

tioner testified that this work had been circulated by the Communist Party, but that the instant translation was not available until several years after it was written; he also testified that at the time of the hearing, it was used in Communist Party classes (R. 143–144). Other testimony also showed that earlier versions of this work had been used in classes (R. 207) during the period from 1924 to 1927 (R. 182). The work was generally sold and distributed by the Party (R. 239). Petitioner testified that he was familiar with it (R. 143). He also testified that at the time of his naturalization, he advocated "socialism" as expressed in the writings of Lenin (R. 862, 898, 103).

EXHIBIT 10

*Programme of the Young Communist International*

This pamphlet was published by the Young Communist League of America (title page), apparently shortly after May 1929 (see page 14 of the exhibit). It is the program adopted by the Fifth World Congress of the Young Communist International and confirmed by the Presidium of the Executive Committee of the Communist International on March 13, 1929 (see page 15 of the exhibit). Petitioner testified that the pamphlet was used in the schools of the Young Communist League and was "probably" in general circulation among Communist Party members and in Party

schools (R. 147–148). Other testimony established that the book was used in teaching communist classes (R. 208) and was widely sold in communist book stores (R. 240). Petitioner testified that he was familiar with the Programme but "I don't know if it is exactly this edition" (R. 147); he also testified that he knew the work (R. 150), and that he subscribed to the principles of the Communist Youth organizations (R. 102). He was a member of the Young Workers' League and successor communist youth organizations from 1922 to 1929 or 1930 (R. 87 *et seq.*).

EXHIBIT 11

*The Theory and Practice of Leninism,* by I. Stalin

This pamphlet was published for the Workers Party of America by the Daily Worker Publishing Company (see cover). It was published either in 1924, when the Daily Worker Publishing Company commenced operations (Exhibit 13, p. 115), or in 1925, when the Workers Party of America changed its name (Exhibit 12, cover, title page, p. 166; cf. R. 9, 93). Petitioner testified that it was "probably" circulated by the Party (R. 159). Other testimony showed that the pamphlet was distributed by Party book stores and among Party members (R. 209, 210, 211), and that it was used in educational classes between 1924 and 1936, apparently in various editions (see R. 184, 194, 201, 209, 222). Between January 15

and August 21, 1925, five thousand copies of this pamphlet were published by the Party (Exhibit 12, p. 157). Petitioner testified that he was "familiar with this work, although I am not familiar with this particular edition" (R. 158; see R. 160). He also testified that he was sure that he had read the work but that he "personally" did not use this edition (R. 159). He did not refer to or offer in evidence the edition with which he was familiar.

EXHIBIT 12

*The 4th National Convention*—Workers (Communist) Party of America

This pamphlet, which reported the convention of the Party held in Chicago, Illinois, from August 21 to 30, 1925, was published by the Daily Worker Publishing Company (cover). It was sold and circulated by the Party in Los Angeles in 1925 and was the official report of the convention (R. 240–241). It was stated by the Daily Worker Publishing Company to be "absolutely indispensable to any member of the party" (see inside back cover page of the exhibit). While petitioner disclaimed familiarity with the literature of this convention (R. 160), he testified that he had attended the convention (R. 97). He also testified that he was in agreement with the general program and principles of the Workers (Communist) Party (R. 102, 162).

## Exhibit 13

### *The Second Year of the Workers Party of America*

This pamphlet comprises the report of the Central Executive Committee to the Third National Convention held in Chicago, Illinois, December 30 to December 31, 1923, and January 1 to January 2, 1924, and includes "theses, programs, and resolutions" (cover). It was published by the Literature Department of the Workers Party of America (cover). The testimony showed that there were a large number of copies of this pamphlet in existence and that it was sold and distributed by Communist Party book stores as the official report of these proceedings (R. 248). Petitioner, however, testified that he was not familiar with the pamphlet or its contents (R. 161) and that he had not attended this convention (R. 97). Later he testified that "I believe this was before my membership in the Party, and did not attend the conventions, and I do not recall" (R. 883). It is to be noted, however, that petitioner was a leader at this time of the Young Workers League (R. 86–88) which in turn was closely related to the Communist International and to the Workers Party of America (see Government's main brief, p. 141), and that he testified that ever since he was sixteen years old he had consistently "subscribed to the principles" of the communist parties and the Communist International (R. 92,

102–103, 108). It is also to be noted that petitioner became a member of the Workers Party of America shortly after this convention; in 1925 he became an officer of the latter Party (R. 92; 175). Thus, in the light of the fact that this exhibit embodied official reports, programs and resolutions of the Party, and of the further fact that petitioner shortly thereafter became a member of the Party, it is submitted that not only his familiarity with the views represented by the work, but his acceptance of such views, may reasonably be inferred (see R. 102).

EXHIBIT 14

*Acceptance Speeches*, William S. Foster, Candidate for President of the United States, and Benjamin Gitlow, Candidate for Vice-President

This pamphlet embodies the proceedings of the Workers (Communist) Party presidential convention in 1928 and includes the report of the committee on nominations, the acceptance speeches of Foster and Gitlow, and closing remarks on the convention (see cover, table of contents). It was published in 1928 for the National Election Campaign Committee by the Workers Library Publishers in 1928 (see cover, title page). The evidence showed that this pamphlet was widely sold and circulated by the Party in 1928 and

thereafter (R. 254–255). Petitioner testified that he was not familiar with the pamphlet, and that he was not present at the convention (R. 158). At the time of this convention he was in Russia attending the Sixth World Congress of the Communist International (R. 834). Nevertheless, he testified that "generally * * * I was in agreement with" the platform of the communist candidates in 1928 and that he supported those candidates (R. 883); he also testified that he was in agreement with the general program and principles of the Workers (Communist) Party (R. 162). In these circumstances, and in the light of the facts that these speeches were officially and very widely circulated throughout the Party and that it was at about this time that petitioner assumed increasing responsibilities in the Party (see main brief, p. 5), petitioner's familiarity with and general acceptance of the views embodied in this work can reasonably be presumed.

EXHIBIT 15

*The Platform of the Class Struggle—National Platform of the Workers (Communist) Party*

This work was published for the National Election Campaign Committee of the Workers (Communist) Party by the Workers Library Publishers (cover, title page). It was published in 1928 (see page containing table of contents). The testimony shows that the pamphlet was dis-

tributed by the Party as the official statement of its platform in 1928 (R. 263). Petitioner testified that he was not familiar with the pamphlet and its contents; that it represented the election platform for the presidential election; that he did not attend the convention; that he was not familiar with its decisions; but that he was in agreement with the general program and principles of the Party at that time (R. 161–162, 882–883). He also testified that "generally * * * I was in agreement with" the platform and supported the candidates who ran on the platform (R. 883), and that he agreed with the general program and principles of the Workers (Communist) Party (R. 162).

EXHIBIT 16

*ABC of Communism, Bucharin and Preobraschensky* (Vol. I)

This pamphlet was published by the Literature Department of the Workers Party of America (cover). It was written in 1919 and was translated into English in June 1921 (p. 7 of exhibit). Petitioner testified that it was issued between 1920 and 1924 (R. 163), but that he did not know whether it was used by the Party, that it had never been accepted as an authorized version, and that it had subsequently been barred from use and its authors expelled from the Communist International (R. 163–164, 834). Other testimony,

however, emphasized the importance of this pamphlet during petitioner's probationary period. Thus, the evidence showed that this pamphlet was a basic work of Party study classes in 1924 and 1925 (R. 185, 193–194, 202); that it was expressly designed for such purposes (Exhibit 16, pp. 5–6); that it was officially circulated by the Party (R. 269); and that it was still advertised by the Workers Library Publishers in 1928 (Exhibits 14 and 15, inside back cover page). Petitioner testified that he was familiar with the work (R. 163) and that he had read it (R. 834).

EXHIBIT 17

*The International of Youth*

This pamphlet was the organ of the executive committee of the Young Communist International (cover) and was published by the Young Communist International in London (title page). It was a quarterly magazine published before 1925 (R. 164) and was sold and circulated by Party book stores as an official magazine of the Young Communist Party (R. 270). Petitioner denied that it was an officail publication of the Communist Party (R. 835) and, although he testified that he had read some issues of the magazine, he could not vouch for having read this particular issue (R. 164). At a later point he testified that he had "no doubt that I have read it, although I must

have been 15 or 16 years old when I read it, and I would not recall everything in it" (R. 835).[5]

EXHIBIT 18

*Why Communism? Plain Talks on Vital Problems,* by M. J. Olgin

This pamphlet was published by the Workers Library Publishers (title page; R. 835). Its first edition was dated 1933, and the second revised edition, in evidence, is dated 1935 (p. 2 of exhibit). Petitioner testified that the pamphlet was circulated by the Party (R. 165). Other testimony showed that it was widely used in educational classes and that many thousands of copies were distributed through Party book stores (R. 221). It had been printed in several forms and was one of the most extensively distributed of the communist pamphlets (R. 272–273, 835). Petitioner testified that it was published while he was out of the country and that he did not recall having read it; he also testified, however, that he had heard of the pamphlet and had read about it, but that he did not believe that he had read it (R. 165).

EXHIBIT 19

*New Frontiers for the Pioneers of 1937*

This work was a yearbook, published in 1937, of the California Young Communist League (cover,

[5] This magazine is of minor importance and has not been referred to in the Government's brief. Only a short excerpt from it appears in the record (see R. 270, 271–272).

title page). It was distributed by the Young Communist League as one of its series of official yearbooks (R. 273). Petitioner testified that he was not familiar with it (R. 175). The exhibit is of minor importance, and was introduced solely to show that petitioner had been a leader of communist youth organizations (see pp. 7 and 26 of the exhibit; R. 273).

EXHIBIT 26

*Statutes, Theses and Conditions of Admission to the Communist International,* adopted by the Second Congress of the Communist International, July 17 to August 7, 1920 [6]

This pamphlet was published in March 1923 and was issued under the auspices of the Workers Party of America (see inside front cover). The particular pamphlet in evidence was taken in a raid in 1928 (R. 274). The testimony indicated that though the pamphlet was never widely circulated, it was often found in the possession of Party leaders (R. 274). Petitioner testified that he had no recollection of the particular edition in evidence and did not know of the Party's publishing it (R. 836). He also testified that "I have no

[6] Petitioner has raised some question whether this exhibit was admitted in evidence. The question is discussed fully in the Government's Reply Brief at pp. 6 and 7, where it is pointed out that the parties themselves treated the exhibit as in evidence. It is to be noted that petitioner's own counsel at the hearing twice expressly referred to the exhibit as having been put in evidence (R. 835–837, 856).

doubt that possibly a pamphlet" like it was sold in Party stores (R. 836). While petitioner insisted that the American Party Communist organizations were expressly exempt from the requirements embodied in this pamphlet and in Exhibit 6 (R. 380), the evidence clearly indicates the contrary. Thus it is stated in the exhibit itself that it is issued under the auspices of the Workers Party of America, which "declares it is in sympathy with the principles of the Communist International and enters the struggle against American capitalism, the most powerful of the capitalist groups, under the inspiration and leadership of the Communist International" (see inside front cover). Some of the policies (Exhibit 12, pp. 137–138) of this pamphlet were expressly adopted by the Party in 1925.[7] We have discussed in detail at pages 39, 40–44 of our main brief, petitioner's contention that the Party was not bound by the principles of this work. We submit that the evidence there analysed establishes that in fact and in practice the Party was subject to the International's admission requirements. As we have stated in our main brief, the record is barren of a single statement, documentary or otherwise, or any other indication, during the period relevant to this case

[7] For other express reference of official action taken by the Party in accordance with directions and orders of the Communist International, see especially the 4th National Convention, Ex. 12, pp. 10, 19, 26, 41, 63–64, 65, 70, 72.

or before 1938, relieving the Party of the admission requirements which on their face are so clearly applicable and applied.

### Exhibit 27

*Program and Constitution—Workers Party of America*

This pamphlet embodies the program and constitution of the Workers Party adopted at National Convention, New York City, December 24 to 27, 1921, and amended at National Convention December 30 to 31, 1923, and January 1, 1924 (cover; see Exhibit 13, pp. 73–86).[8] The pamphlet was published by the Literature Department of the Workers Party of America (cover) and was supplied to persons joining the Party (R. 275). It was circulated in 1924 and 1925 or 1926 (R. 275). More than half a million copies were distributed (Exhibit 13, p. 27). Petitioner testified that he was not personally familiar with this pamphlet and that it was "probably" one of the drafts presented to a convention (R. 836–837, 861). He also testified that he subscribed to the principles of the Workers Party (R. 102). The same reasons which support the conclusion that petitioner was familiar with the views embodied in this work and accepted such views, apply in respect of this pamphlet as we have shown to

[8] *The Second Year of the Workers Party of America* (Exhibit 13; see *supra*, pp. 9–10) embodies the same program (at pp. 73–86).

apply in respect to Exhibit 13, *supra,* p. 10. This was the program and constitution of the Party he joined, of which he was an officer, and with the principles of which he agreed. (R. 91, 92, 93, 94, 102. See R. 862.)

*Comments:*

In addition to the evidence, just set out, specifically directed to the particular exhibits, other general evidence has an important bearing upon the probative value of these exhibits as evidence of the principles of the Communist Party and of petitioner's own views. This general evidence concerns the method of preparing the literature, the method of its publication, the method of its distribution, the general relationship of individual members of the Communist Party to the Party itself, and petitioner's role in the Party.

The evidence establishes the propriety of utilizing this method of determining the Party's and petitioner's principles. The record shows the existence of a number of factors which together establish that communist literature has characteristics which sharply distinguish it from ordinary political literature. These factors establish that the documents here involved are not vagrant expressions of individuals left freely to express themselves.

Thus, as we have described more fully at pages 142 to 145 of our main brief, a basic precept of

communist tactics was systematic propagandization through publication and distribution of communist literature. This literature was issued through publishing agencies of the Communist Party and, as such, bore the Party's official imprint since those publishing agencies were subject to the rigid supervision of the Party. All of the literature which we have listed above was published by official communist agencies (see pp. 143–145 of our main brief). In addition, the evidence establishes that the Party distributed and circulated its own literature, maintained its own book stores, and conducted speakers bureaus, study classes, and forums, in which the literature was utilized (main brief, p. 145). Some of the literature was not only officially published, but comprised official constitutions, official programs, and official reports (main brief, pp. 145–149).

A second major characteristic is the specific and rigorous control to which both the author and the content of the literature were subjected by the Communist Party (see main brief, pp. 24–27, 142–145). Thus the Party press was under the centralized ownership of the Party (Exhibit 13, pp. 42–44; Exhibit 12, p. 78). All party periodicals were required to be edited by loyal Communists; the propaganda was required to correspond with the programs and decisions of the Third International; and all periodicals were to be made subject to the Presidium of the Party (Exhibit 26, p. 27). The record shows that one editor was

removed by the Party and replaced by a member who "understands, accepts, and fights for the Communist line of our Party and the Communist International" (Exhibit 12, p. 145); another Communist was expelled from the Party upon charges, among others, that he had failed to comply with the instructions of the Party (Exhibit 12, p. 97). Literature which did not conform to Party principles was barred from Party schools and classes (R. 163–164, 834).

It is against these fundamental characteristics that petitioner's later and occasional disavowal of some of the literature must be measured. A basic phenomenon of the communist organizations was the rigorous requirement imposed upon all members of undeviating adherence to its principles (see main brief, pp. 29–45). The weeding out and expulsion of dissidents was a first principle of the Party (Exhibit 26, pp. 21–22; Exhibit 13, p. 128; Exhibit 12, pp. 24–25, 93–96; see R. 240). It must be recalled that petitioner, an intelligent man and an intellectual revolutionary, was in a position in which it can fairly be inferred that he was aware of, and accepted, this literature. He repeatedly testified to his general agreement with the principles of Communism and the various communist organizations (R. 92, 102–103, 108, 123, 862, 898). He was a leader of the Party and attended many of its conventions; he was educational organizer and organization director; and later he was frequently a communist candidate for public office.

In these circumstances the literature which we have seen the Party took careful steps to edit, publish, and distribute represents the views to which he adhered. No single act, association, spoken or written word was brought forward to show that from 1922 to 1927, or for years thereafter, the principles of the Party were to the slightest degree inconsistent with his own. The Party's strict discipline and his own subscription to communist principles brings those principles to him. The record is entirely barren of any contemporaneous disavowals by petitioner; on the contrary, his steady rise in the councils of the Party and his admitted acceptance of the principles of Communism can scarcely be squared with any contention of disagreement with the Party principles. Thus, at most, his testimony at the hearing that he was not familiar with some of the literature introduced by the Government raises an issue of credibility and that a very limited one. There was enough to show what he believed even if he were unfamiliar with some of the literature. We submit that there is no warrant for holding, contrary to the findings of the courts below that the petitioner did not accept the Party principles.

Respectfully submitted.

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